

with farmers in some states, like North Carolina, disadvantaged by their states commendable aggressive actions to curb pollution from factory farms.

This legislation will restore confidence that we can swim and fish in our streams and rivers without getting sick. It will do much to address our number one remaining water pollution problem—polluted runoff. I hope the House will join me in the effort to clean up factory farm pollution.

#### SUBCHAPTER S REVISION ACT OF 1999

**HON. E. CLAY SHAW, JR.**

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, February 10, 1999*

Mr. SHAW. Mr. Speaker, today over 2 million businesses pay taxes as S Corporations and the vast majority of these are small businesses. The S Corporation Revision Act of 1999 is targeted to these small businesses by improving their access to capital, preserving family-owned business, and lifting obsolete and burdensome restrictions that unnecessarily impede their growth. It will permit them to grow and compete in the next century.

Even after the relief provided in 1996, S corporations face substantial obstacles and limitations not imposed on other forms of entities. The rules governing S corporations need to be modernized to bring them more on par with partnerships and C corporations. For instance, S corporations are unable to attract the senior equity capital needed for their survival and growth. This bill would remove this obsolete prohibition and also provide that S corporations can attract needed financing through convertible debt.

Additionally, the bill helps preserve family-owned businesses by counting all family members as one shareholder for purposes of S corporation eligibility. Under current law, multi-generational family businesses are threatened by the 75 shareholder limit which counts each family member as one shareholder. Also, non-resident aliens would be permitted to be shareholders under rules like those now applicable to partnerships. The bill would eradicate other outmoded provisions, many of which were enacted in 1958.

The following is a detailed discussion of the bill's provisions.

#### **TITLE I—SUBCHAPTER S EXPANSION**

##### **Subtitle A—Eligible Shareholders of an S Corporation**

SEC. 101. Members of family treated as one shareholder—All family members within seven generations who own stock could elect to be treated as one shareholder. The election would be made available to only one family per corporation, must be made with the consent of all shareholders of the corporation and would remain in effect until terminated. This provision is intended to keep S corporations within families that might span several generations.

SEC. 102. Nonresident aliens—This section would provide the opportunity for aliens to invest in domestic S corporations and S corporations to operate abroad with a foreign shareholder by allowing nonresident aliens

(individuals only) to own S corporation stock. Any effectively-connected U.S. income allocable to the nonresident alien would be subject to the withholding rules that currently apply to foreign partners in a partnership.

##### **Subtitle B—Qualification and Eligibility Requirements of S Corporations**

SEC. 111. Issuance of preferred stock permitted—An S corporation would be allowed to issue either convertible or plain vanilla preferred stock. Holders of preferred stock would not be treated as shareholders; thus, ineligible shareholders like corporations or partnerships could own preferred stock interests in S corporations. A payment to owners of the preferred stock would be deemed an expense rather than a dividend by the S corporation and would be taxed as ordinary income to the shareholder. Subchapter S corporations would receive the same recapitalization treatment as family-owned C corporations. This provision would afford S corporations and their shareholders badly needed access to senior equity.

SEC. 112. Safe harbor expanded to include convertible debt—An S corporation is not considered to have more than one class of stock if outstanding debt obligations to shareholders meet the 'straight debt' safe harbor. Currently, the safe harbor provides that straight debt cannot be convertible into stock. The legislation would permit a convertibility provision so long as that provision is substantially the same as one that could have been obtained by a person not related to the S corporation or S corporation shareholders.

SEC. 113. Repeal of excessive passive investment income as a termination event: This provision would repeal the current rule that terminates S corporation status for certain corporations that have both subchapter C earnings and profits and that derive more than 25 percent of their gross receipts from passive sources for three consecutive years.

SEC. 114. Repeal passive income capital gain category—The legislation would retain the rule that imposes a tax on those corporations possessing excess net passive investment income, but, to conform to the general treatment of capital gains, it would exclude capital gains from classification as passive income. Thus, such capital gains would be subject to a maximum 20 percent rate at the shareholder level in keeping with the 1997 tax law change. Excluding capital gains also parallels their treatment under the PHC rules.

SEC. 115. Allowance of charitable contributions of inventory and scientific property—This provision would allow the same deduction for charitable contributions of inventory and scientific property used to care for the ill, needy or infants for subchapter S as for subchapter C corporations. In addition, S corporations would no longer be disqualified from making 'qualified research contributions' (charitable contributions of inventory property to educational institutions or scientific research organizations) for use in research or experimentation. The S corporation's shareholders would also be permitted to increase the basis of their stock by the excess of deductions for charitable contributions over the basis of the property contributed to the S corporation.

SEC. 116. C corporation rules to apply for fringe benefit purposes—The current rule that limits the ability of "more-than-two-percent" S corporation shareholder-employees to exclude certain fringe benefits from wages would be repealed for benefits other than health insurance. Under this bill, fringe

benefits such as group-term life insurance would become excludable from wages for these shareholders. However, health care benefits would remain taxable to the extent provided for partners.

##### **Subtitle C—Taxation of S Corporation Shareholders**

SEC. 120. Treatment of losses to shareholders—A loss recognized by a shareholder in complete liquidation of an S corporation would be treated as an ordinary loss to the extent the shareholder's adjusted basis in the S corporation stock is attributable to ordinary income that was recognized as a result of the liquidation. Suspended passive activity losses from C corporation years would be allowed as deductions when and to the extent they would be allowed to C corporations.

##### **Subtitle D—Effective Date**

SEC. 130. Effective date—Except as otherwise provided, the amendments made by this Act shall apply to taxable years beginning after December 31, 1999.

Mr. Speaker, I urge my fellow members to review and support the S Corporation Revision Act, which will help families pass their businesses from one generation to the next and create a level playing field for small business. I look forward to working with my colleagues on the Ways and Means Committee to enact this bill.

IN MEMORY OF REVEREND DAVID  
LEE BRENT

**HON. IKE SKELTON**

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, February 10, 1999*

Mr. SKELTON. Mr. Speaker, it is with deep sadness that I inform the House of the death of Reverend David Lee Brent of Jefferson City, Missouri.

Reverend Brent was born on June 27, 1929, in Forest City, Arkansas, the son of Will B. and Annie Mae Foreman Brent. A 1946 graduate of Benton Harbor High School, he graduated from Moody Bible Institute of Chicago, in 1957. He received his master's degree and a doctor of theology degree from Southern Baptist Theological Seminary in Georgia.

Reverend Brent served on the St. Louis Council on Human Rights, served several churches in Missouri, was co-paster of Second Christian Church, Jefferson City, MO, and was a licensed insurance agent. He was the chief human relations officer for the Missouri Department of Mental Health of 28 years.

Reverend Brent was a leader in the community, in his church, and in the local National Association for the Advancement of Colored People (NAACP). Two years ago, he became the president of the NAACP in Jefferson City. Shortly after taking the helm, he was instrumental in the formation of a city task force to study racial tensions in the public schools. Reverend Brent was the co-founder of Christians United for Racial Equality and the Black Ministerial Alliance. Reverend Brent was also a member of Tony Jenkins American Legion Post 231.

I know the House will join me in extending heartfelt condolences to his family: his wife, Estella; his two sons, five daughters, one brother, three sisters, six grandchildren, and three great-grandchildren.

LAND TRANSFER FOR SAN JUAN  
COLLEGE

**HON. TOM UDALL**

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, February 10, 1999*

Mr. UDALL of New Mexico. Mr. Speaker, today I introduce legislation, which is being co-sponsored by my colleague from New Mexico, HEATHER WILSON, that will transfer a parcel of federal property to San Juan College. This transfer will benefit the people of San Juan County, New Mexico—specifically the students and faculty of San Juan College. This legislation creates a situation in which all benefit by allowing the transfer of an unwanted federal land to an educational institution which can use it. Mr. Speaker, this is a companion bill to a bill that has already been introduced in the other chamber on January 21, 1999. The other bill was introduced by Senator DOMENICI and is also co-sponsored by Senator BINGAMAN, both of New Mexico.

This legislation provides for the transfer by the Secretary of Agriculture and the Secretary of Interior of real property and improvements at an abandoned and surplus ranger station for the Carson National Forest to San Juan College. This site is located in the Carson National Forest near the town of Gobernador, New Mexico. The site will continue to be used for public purposes, including educational and recreation purposes by San Juan College.

Mr. Speaker, the Forest Service has determined that this site is of no further use because the Forest Service has moved its operations to a new administrative facility in Bloomfield, New Mexico several years ago. Transferring this site to San Juan College would protect it from further deterioration.

In summary, this bill creates a situation in which all benefit: the federal government, the State of New Mexico, the people of San Juan County, and most importantly, the students and faculty of San Juan College. Since this legislation enjoys bipartisan support from the New Mexico delegation, I look forward to prompt consideration and passage of this legislation.

CLEVELAND HOMELESS PROJECT  
LOSES FUNDS FROM HUD

**HON. DENNIS J. KUCINICH**

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, February 10, 1999*

Mr. KUCINICH. Mr. Speaker, I rise today to expose a great injustice that has been committed by a federal agency against a needy population in the Cleveland metropolitan area. The victims of this injustice are homeless men who are struggling to get back on their feet and put their lives together. And the perpetrator of this injustice is the U.S. Department of Housing and Urban Development (HUD).

I have an increasing interest in the activities of HUD, given my experience with the agency over the past two years. I find dealing with HUD as a Member of Congress to be a most frustrating experience, and I must imagine the

EXTENSIONS OF REMARKS

frustration felt by our constituents, who do not occupy a seat in Congress, with the agency. Indeed, HUD is a disappointment. It represents why many Americans have lost confidence in their federal government.

Today I enter into the CONGRESSIONAL RECORD a collection of letters and newspaper articles that document the following situation in Cuyahoga County.

The Department of Housing and Urban Development recently refused to provide continued funding to a very worthy program for homeless men in Cleveland because of a "technical" mistake. This decision has been appealed, and HUD has summarily rejected the appeal.

Since 1995, the Salvation Army in Cleveland has operated an innovative program—the PASS Program—that helps homeless men by providing a place for them to live (for up to 12 months) while they put their lives back together. The program provides counseling, job training and transition skills. The program is one component of an entire "continuum of care" services that are coordinated by the Cuyahoga County Office of Homeless Services. The city and the county have developed an excellent system in which government officials and community organizations work together to develop a comprehensive response to the homeless problem in the metropolitan area. The County considers the Salvation Army program as their highest priority for funding.

As an innovative effort, the PASS Program received demonstration project funds from HUD for several years. By the time they applied for another year of funding—a request of \$1.5 million to support their program—this particular HUD demonstration program had been terminated. The County and the Salvation Army realized that this had happened, and contacted the appropriate HUD office in Columbus, Ohio to seek guidance.

County staff asked HUD staff whether their program would be considered a "New" program or a "Renewal." According to the County, HUD staff did not respond one way or another. So the applicant assumed that this would be considered a Renewal, and completed the paperwork accordingly. The application was submitted to HUD in Washington, and became one of 2,600 projects that sought funding.

On December 23, 1998, when the President announced homeless grants across the country, Northeast Ohio received \$9.4 million for a variety of HUD programs by various community-based organizations. Cleveland officials were shocked to learn that the PASS Program—their top priority—would not be funded. When contacted for an explanation, HUD officials explained that they could not consider the program because the applicant had committed a "technical error" and submitted the wrong form.

When I met personally with top HUD officials, I was told that the reason this program was not funded was because the applicants had submitted the wrong budget form. The wrong budget form! Therefore, HUD could not consider the proposal and could not tell the applicant that this error had been made until after all of the grants had been announced. This is a great injustice, Mr. Speaker, and I

*February 10, 1999*

urge the Congress to investigate this and other examples of abuses at HUD.

The following documentation includes letters from the Northeast Ohio Coalition for the Homeless and Cuyahoga County Commissioners Tim McCormick, Jane L. Campbell and Jimmy Dimora.

NORTHEAST OHIO COALITION

FOR THE HOMELESS,

*Cleveland, OH, December 24, 1998.*

Secretary ANDREW CUOMO,

*Department of Housing and Urban Development, Washington, DC.*

Dear Secretary CUOMO: As a member of the Cleveland/Cuyahoga Continuum of Care process, we once again want to register our strongest dissatisfaction with the federal funding process conducted by the Department of Housing and Urban Development. The Coalition is a collaboration of homeless people, members, and advocates. We spent a great deal of staff time and energy in getting the opinions and "expert" testimony of homeless people to be a part of the process. We staged regular meetings with those on the streets to develop a priority list of gaps in the community, and then compiled that information for the HUD application. The two projects that were skipped by officials in HUD Washington were two important projects for the community.

This is the third year in a row that Cleveland/Cuyahoga County has seen the priorities of the community disregarded by officials in Washington and valuable resources that were intended to get homeless people into stable housing were denied our community. Again, we ask if your agency is being faithful to the Congressional mandate to return control of these funds to the local community? It is disingenuous to champion local control and yet every year discard the priorities of the local Continuum of Care coordinating body. We would have hoped that HUD would have gone to great lengths to fund a project like the Salvation Army's PASS program, which was deemed by the Continuum of Care committee as Cuyahoga County's highest priority for funding of Recovery Resource's project which was our second highest rated new project.

We were unhappy with the process last year, and did not see any relief from the appeal process. This year the situation demands your prompt attention. This year we were denied funding for a program that currently exists in the community which was developed as the foundation for the services to single men. You will see Cleveland/Cuyahoga County back significantly in addressing the needs of homeless men by withdrawing funding from the PASS program. The other program, submitted by Recovery Resources, was an attempt to provide assistance to people coming out of treatment to maintain sobriety by funding a stable living environment. This is critical especially in light of the recent report by the National Coalition for the Homeless which found homeless people, in many cases, leave treatment and are forced to return to the streets and the drug and alcohol culture.

We once again renew our call for some changes in the HUD Continuum of Care process in Washington so that the local coordinating body actually makes the decisions on where Federal funds are disbursed in Cuyahoga County. We ask that the priorities of the local community including homeless people be respected. There needs to be communication between HUD and the applicant before there is a public announcement if one of the projects that the community has